

EXHIBIT

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EXHIBIT 38

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF NEW YORK, et al.

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official capacity as
SECRETARY OF THE U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Case No. 1:25-cv-00196

DECLARATION OF STEPHEN PROPHETER

I, Stephen Propheter, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a resident of the State of California. I am over the age of 18 and have personal knowledge of all the facts stated herein, except to those matters stated upon information and belief; as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the matters set forth below.

2. I submit this Declaration in support of the States' Motion for a Preliminary Injunction.

Professional Background

3. I am the Director of the Early Education Division (EED) at the California Department of Education (CDE), a position I have held since October 2019. In this role, I oversee investments for universal prekindergarten programs, including California State Preschool and Transitional Kindergarten. I am responsible for providing oversight and leadership to approximately 700 early education contractors as well as administration of state programs including the Desired Results Developmental Profile, Preschool and Transitional Kindergarten

Learning Foundations, Preschool Framework, the Inclusive Early Education Expansion Program, the California State Preschool Program Quality Rating and Improvement System, and multiple grants to support access and quality in California's Universal PreKindergarten programs.

4. I initially joined CDE in 2007. Prior to my current position, I served in a variety of capacities in the Child Development and Nutrition Fiscal Services Unit in the Fiscal and Administrative Services Division, including holding responsibilities for budget and fiscal policy. I was the Associate Director of EED from April 2019 until my appointment as the Director. As the Associate Director, I provided leadership in the implementation of the Early Learning and Care Division's Strategic Plan, including continuing to build on the division's work on equity and improving access to high-quality early learning and care programs. The Division's Strategic Plan provides the Vision, Mission, and Principles for how the division will implement early learning and care in California.

5. I have a Bachelor of Science in Business Administration from California State University, Sacramento. I have been the operator of a licensed small family childcare home in California, serving private-pay families.

6. EED plays a vital role in overseeing and supporting early childhood education programs across California. EED provides leadership and support to contractors and the child development community, ensuring high quality early education programs are provided to children from two to five years old. Many CDE early childhood education programs also are Head Start grantees that layer Head Start funding with state subsidy funding to enhance services for children two to five years old.

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The Head Start Program

7. The federal Head Start program, founded in 1965, promotes school readiness for children of low-income families from birth to five years old. Head Start services support early learning and development, health, and family wellbeing.

8. Head Start is administered by the Office of Head Start (OHS) within the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS).

9. Head Start programs include the Early Head Start-Child Care Partnership (EHS-CCP) program for infants, toddlers, and expectant families and Head Start preschool programs for primarily three-and four-year-old children. In addition, Head Start includes American Indian and Alaska Native (AIAN) Head Start programs and Migrant and Seasonal Head Start (MSHS) programs serving farmworker families.

10. In 2014, EHS-CCP was launched to expand access to high-quality early childhood education for infants and toddlers from low-income families. CDE was first awarded an EHS-CCP grant in January 2015.

11. As its primary goal, the EHS-CCP grant builds on the current level of early childhood education services offered to children and families in the community and increases the quality of services offered through center-based and family childcare home education network programs. Early Head Start programs provide similar services as preschool Head Start programs, but they are tailored for the unique needs of infants and toddlers. Early Head Start programs promote the physical, cognitive, social, and emotional development of infants and toddlers through safe and developmentally enriching caregiving. The EHS-CCP program is designed to expand the availability of EHS services and applicability of EHS standards to existing childcare centers and family childcare homes.

12. The Head Start programs are largely administered at the federal level by HHS employees working out of HHS Regional Offices.

13. During the 2023-2024 program year, which spanned from July 1, 2024, to June 30, 2024, CDE was awarded \$5,813,013 in EHS-CCP funds, which were used to provide services across five rural counties of California: Butte, Del Norte, Fresno, Humboldt, and Trinity. As a grant recipient, CDE is required to provide a 20 percent match as non-federal match each budget period. During the 2023-2024 program year, 386 children were served, including 29 children in foster care, 12 experiencing homelessness, and 160 from families receiving public assistance such as Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI).

OHS Funding for EHS-CCP

14. CDE's EHS-CCP program is funded exclusively through grants from OHS and a required 20 percent of non-federal matching funds as a condition of the OHS grant. Each grant award covers one year of the five-year grant cycle, with each fiscal year beginning on July 1. CDE is currently receiving funds in the first year of a five-year cycle, and the 2025 fiscal year ("Year Two") will begin on July 1, 2025.

15. CDE draws down funds monthly as expenses are incurred and Partner Agencies (PAs) require reimbursement. CDE's monthly draw-down is typically between \$200 and \$900 thousand and is effectuated through the HHS Payment Management System (PMS). On April 22, 2025, CDE received notice via email that, effective March 17, 2025, PMS had implemented a new policy that requires written justification for all payments.

16. During each five-year cycle, grantees such as CDE must submit yearly funding applications that provide updated information regarding project scope, objectives, budget, and related matters. CDE submitted its Year Two application on March 28, 2025.

17. On June 12, 2024, CDE submitted an application to OHS requesting an increase in the number of funded slots for CDE's PAs in Fresno County. In October 2024, CDE's assigned Regional Program Specialist notified us that the application had been approved. This approval was confirmed again in February 2025. However, to date, CDE has not received the Notice of Award for confirmation. The recent layoffs of ACF staff may further delay resolution or communication regarding the status of the application.

Reliance on HHS Head Start Staff Prior to April 1, 2025

18. Prior to April 1, 2025, CDE regularly relied on HHS Head Start staff for many aspects of the day-to-day operation of the EHS-CCP program.

19. HHS staff offered training, technical assistance, monitoring, site visits, and other support to California's EHS-CCP program.

20. The HHS Head Start staff with whom CDE communicated and relied upon were primarily located in the Regional Office of Region 9 in San Francisco, California. The staff in Region 9 has supported and overseen California's EHS-CCP program since January 2015. Understanding California's state subsidy context is critical as many Head Start grantees also participate in California's state subsidy system, where rules governing programs may vary substantially. Having knowledge of both systems, and the ability to communicate directly with state subsidy agencies, is efficient and better serves Californians.

21. HHS Head Start staff have been responsible for processing grant applications, providing technical assistance, and supervising CDE's EHS-CCP program. These specialists have worked with CDE for nine years, and have intimate familiarity with CDE's structure and operations, as well as those of our grantees and partners.

22. HHS Head Start staff have attended and provided training in support of CDE's grant on topics such as regulations and findings on federal reviews.

Changes in HHS Head Start Operations Since April 1, 2025

23. I recently learned that HHS has implemented a RIF that impacted ACF staff responsible for Head Start, Early Head Start, and EHS-CCP. Since April 1, 2025, CDE has seen significant changes to the operations of the EHS-CCP program.

24. Specifically, CDE's primary points of contact at HHS for training, technical assistance, guidance, funding questions, program implementation questions and other grantee oversight issues are no longer available to be contacted, and we have not been able to locate other HHS staff to perform these functions.

25. CDE is aware that multiple ACF staff from Region 9 are on administrative leave until June 2, 2025, including the Regional Program Director, Program Specialist, Regional Program Manager, and Supervisory Head Start Program Specialist.

26. On April 3, 2025, CDE received an email from Laurie Todd-Smith, Ph.D., Deputy Assistant Secretary for Early Childhood Development of ACF confirming the closure of five HHS Regional Offices effective April 1, 2025. The email requests that grantees use the correspondence feature within the Head Start Enterprise System (HSES) as the primary means of communication for grant activities and requests that communications to HHS about Head Start be directed to the following email address: ohsrecipientsupport@acf.hhs.gov. Before April 1, 2025, CDE maintained regular contact with ACF staff by phone and email. Since April 1, 2025, CDE has not received any official communication from Region 9 program staff. The abrupt loss of communication with ACF staff has created gaps in support and has made it difficult for CDE to get timely guidance and information.

27. On May 1, 2025, OHS held a brief nine-minute webinar announcing the closure of regional offices, but provided no information about the status of regional leadership or the reassignment of responsibilities to alternative regional offices. The webinar did not include

interactive features such as a chat function or the opportunity to submit questions. This lack of clarity indicates that EHS-CCP grantees still lack support from an assigned regional office.

28. Additionally, CDE's regularly scheduled April and May monthly meetings with ACF staff were cancelled following the abrupt closure of the Region 9 office.

29. Since the elimination of the Region 9 office in San Francisco, OHS staff have not provided technical assistance, have not conducted site visits, and have not been available to respond to grant questions or to provide other grant oversight activities. In addition, program staff have not been available to answer questions or advise on issues relating to our administration of state funded programs that combine funding with Head Start funds for preschool.

Effect on California's Head Start Program

30. Based on my sixteen years of experience working with ACF, I believe the RIF and the closure of the San Francisco Regional Office will harm CDE's EHS-CCP programs in several ways.

31. HHS Head Start staff are no longer available to offer training, technical assistance, monitoring, site visits, and other support to Head Start programs. CDE's monthly meeting with the Regional Office ended effective April 1, 2025. This meeting was a monthly oversight and information sharing meeting where CDE could discuss program progress, implementation concerns, and learn about program updates at the federal level.

32. The Regional Office supported CDE with technical assistance in understanding the Head Start Program Performance Standards within the EHS-CCP. Having a Program Specialist who understands California's state subsidy early learning and care programs and Community Care Licensing requirements is crucial when implementing EHS-CCP services. In

addition, Regional Office staff were available as collaborators on policy and implementation issues for state subsidy programs where state decisions would impact Head Start operations.

33. We have also seen an increase in administrative burden in drawing funds through the PMS due to the addition of a required justification associated with each funding draw. This additional requirement increases the burden associated with drawing funds and risks delaying funding draws while OHS burden is increased due to the need to review the justification.

34. The changes to the HHS Head Start Program have placed a burden on CDE because HHS Head Start Program staff are no longer available to field questions and inquiries from Head Start Programs. Those Programs are now contacting CDE frequently, placing a burden on CDE staff and resources and diverting resources away from other key state programs.

35. There is imminent risk that funding to Head Start programs in California will be delayed because the HHS Head Start staffing cuts will likely have impact on HHS's ability to make payments to Head Start Programs. This will in turn harm California because EHS-CCP funding allows CDE to improve and expand comprehensive health and quality services to 236 infants, toddlers, preschool age children, and their families in rural counties in Northern California. Many children and families in this region share characteristics that have been identified in the community assessment process. These include children who are protective-service recipients; children who are at risk of exploitation; families below federal poverty income levels; English language learners and dual language learners; and pregnant teens, teen parents, and low birth weight babies.

36. Many of the Northern California counties that benefit from EHS-CCP are sparsely populated, with limited access to basic services, including early learning and care options. This area has many needs and few resources. If EHS-CCP funding were to be delayed or

discontinued, it would exacerbate existing disparities and have profound and lasting effects on the children and families who rely on Early Head Start services.

37. Although our EHS-CCP grantees and partners receive some state funding, it does not cover the costs of comprehensive services that the federal funds provide. If CDE were to lose the federal funding, basic services would continue through other state funds; however comprehensive services would end, and families would be more at risk of adverse impacts.

38. The loss of EHS-CCP would have dramatic and far-reaching impacts throughout our community. Children would lose educational, nutritional, and healthcare services. Low-income parents or guardians may be forced to cut spending on other critical needs to fill the gaps, and some may be forced out of work so they can care for their children. The long-term impacts to the health, academic, and professional success of EHS-CCP children would also be significant.

39. These changes risk significant harm to young children and their families in California because children and families currently receiving services will lose access to comprehensive services and risk being served in lower quality settings. Educators in these settings will have less access to professional development and essential training as well.

40. I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Stephen
Propheter

Digitally signed by Stephen
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Stephen Propheter

Date: May 6, 2025